

## PAYMENTS TO CONTRACTORS AND COMPLETION

## 14.1 SCHEDULES

At least ten (10) days prior to the first Application for Payment, CONTRACTOR shall (except as otherwise specified in the Contract Documents), submit to ENGINEER a progress schedule, a final schedule of Shop Drawing submission and where applicable, a schedule of values of the Work. These schedules shall be satisfactory in form and substance to ENGINEER. The schedule of values shall include quantities and unit prices aggregating to the Contract Price, and shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

## 14.2 APPLICATION FOR PROGRESS PAYMENT

Payment to CONTRACTOR will be made from OWNER's funds as follows:

14.2.1 Progress payments will be made monthly, commencing with the month next succeeding the month in which OWNER notifies CONTRACTOR in writing to commence work (Notice to Proceed). ENGINEER will make an approximate estimate of the value of the Work done and the value (based on receipted invoices) of unused materials delivered and stored on the site or stored at a location approved by the ENGINEER for the Work during the previous calendar month which estimate shall be incorporated in an Application for Payment. After each such Application for Payment has been approved by OWNER, OWNER will, within twenty (20) days, make payment to CONTRACTOR in the amount of each such Application for Payment, less retainage.

14.2.2 Five percent (5%) of the amount of each Application for Payment, including materials delivered to the job site but not installed, will be retained until Substantial Completion unless good cause exists for a requirement of a different percentage. Upon Substantial Completion, retainage shall be reduced to two percent (2%) of the total contract price unless good cause exists to retain an amount greater or less than two percent (2%). The determination of good cause as specified heretofore shall be recommended by ENGINEER and approved by OWNER. The retainage defined above shall be held by OWNER until completion and acceptance of the Work, as provided herein. If OWNER fails to make a particular progress payment to CONTRACTOR as specified herein, such failure shall not be held to violate or void this Contract, and no interest or penalty payment shall be owing to CONTRACTOR on such progress payment.

## 14.3 CONTRACTOR'S WARRANTY OF TITLE

CONTRACTOR warrants and guarantees that

title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER at the time of payment free and clear of all liens, claims, security interests and encumbrances (hereafter in these General Conditions referred to as "Liens").

## 14.4 REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT

14.4.1 The CONTRACTOR and OWNER shall establish at the pre-construction conference the day of each month which shall be the last day the CONTRACTOR is entitled to include Work for the progress payment for the month. ENGINEER's approval of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the Work in progress as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of ENGINEER's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and any qualifications stated in his approval) and that CONTRACTOR is entitled to payment of the amount approved. The ENGINEER shall within seven (7) working days from receipt of the Application for Payment (1) approve and send the Application to the OWNER, or (2) disapprove and return the Application to CONTRACTOR, or (3) respond to CONTRACTOR by making inquiries about the Application such as requiring explanation or documentation in support of the Application. However, by approving any such payment, ENGINEER will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work, or that the means, methods, techniques, sequences, and procedures of construction have been reviewed or that any examination has been made to ascertain how or for what purpose CONTRACTOR has used the monies paid or to be paid to CONTRACTOR on account of the Contract Price, or that title to any Work, materials or equipment has passed to OWNER free and clear of any liens.

14.4.2 ENGINEER's approval of final payment will constitute an additional representation by ENGINEER to OWNER that the conditions precedent to CONTRACTOR's being entitled to final payment as set forth in paragraph 14.9 have been fulfilled.

14.4.3 ENGINEER may refuse to approve the whole or any part of any payment if, in his opinion, it would be incorrect to make such representations to OWNER. He may also refuse to approve any such payment, or because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously approved to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.4.3.1 the Work is defective, or completed Work has been damaged requiring correction or replacement,

14.4.3.2 written claims have been made against OWNER or liens have been filed in connection with the Work,

14.4.3.3 the Contract Price has been reduced because of Modifications,

14.4.3.4 OWNER has been required to correct defective Work or complete the Work in accordance with paragraph 13.9,

14.4.3.5 of CONTRACTOR's unsatisfactory prosecution of the Work in accordance with the Contract Documents, or

14.4.3.6 of CONTRACTOR's failure to make payment to any subcontractor, or for labor, materials, or equipment.

#### 14.5 SUBSTANTIAL COMPLETION

14.5.1 When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall, in writing to OWNER and ENGINEER, certify that the entire Work is substantially complete and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER or OWNER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving his reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which he may make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objection, ENGINEER concludes that the Work is not substantially complete, ENGINEER will, within fourteen (14) days after submission of the tentative certificate to OWNER, notify CONTRACTOR in writing, stating his reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially

complete, ENGINEER will, within said fourteen (14) days, execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as he believes are justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities and insurance. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER prior to his issuing the definitive certificate of Substantial Completion ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

14.5.2 OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### 14.6 PARTIAL UTILIZATION

Use by OWNER of a completed portion of the Work may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.6.1 OWNER may at any time request CONTRACTOR in writing to permit OWNER to use any part of the Work which OWNER believes to be substantially complete and which may be so used without significant interference with construction of the other parts of the Work. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER and ENGINEER that said part of the work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time thereafter OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER or OWNER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving his reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, ENGINEER will execute and deliver to OWNER and CONTRACTOR a certificate to that effect, fixing the date of Substantial Completion as to that part of the Work, attaching thereto a tentative list of items to be completed or corrected before final payment. Prior to issuing a certificate of Substantial Completion as to part of the Work ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to the division of responsibilities pending

final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, utilities and insurance for that part of the Work which shall become binding upon OWNER and CONTRACTOR at the time of issuing the definitive certificate of Substantial Completion as to that part of the Work unless OWNER and CONTRACTOR shall have otherwise agreed in writing and so informed ENGINEER. OWNER shall have the right to exclude CONTRACTOR from any part of the Work which ENGINEER has so certified to be substantially complete, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.6.2 In lieu of the issuance of a certificate of Substantial Completion as to part of the Work, OWNER may take over operation of a facility constituting part of the Work whether or not it is substantially complete if such facility is functionally and separately usable; provided that prior to any such takeover, OWNER and CONTRACTOR have agreed as to the division of responsibilities between OWNER and CONTRACTOR for security, operation, safety, maintenance, correction period, heat, utilities and insurance with respect to such facility.

#### 14.7 FINAL INSPECTION

Upon written notice from CONTRACTOR that the Project is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Project is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

#### 14.8 FINAL APPLICATION FOR PAYMENT

After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents, all as required by the Contract Documents, and after ENGINEER has indicated that the Project is acceptable (subject to the provisions of paragraph 14.11), CONTRACTOR may request final payment. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents and such other data and schedules as OWNER may reasonably require, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all liens arising out of or filed in connection with the Project. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all

payrolls, material and equipment bills, and other indebtedness connected with the Project for which OWNER or his property might in any way be responsible, have been paid or otherwise satisfied; and consent of the Surety, if any, to final payment. If any Subcontractor, manufacturer, fabricator, supplier or distributor fails to furnish a release or receipt in full, CONTRACTOR may furnish a bond or other collateral satisfactory to OWNER to indemnify OWNER against any lien.

#### 14.9 FINAL PAYMENT AND ACCEPTANCE

14.9.1 If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the documentation to accompany the final Application for Payment--all as required by the Contract Documents, ENGINEER is satisfied that the Project has been completed and CONTRACTOR has fulfilled all of his obligations under the Contract Documents, ENGINEER will, within ten (10) days after receipt of CONTRACTOR's request for final payment, indicate in writing his approval of payment and present the final Application for Payment to OWNER. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.11. Otherwise ENGINEER will indicate in writing the reasons for refusing to approve final payment, in which case CONTRACTOR shall make the necessary corrections. If the Application and accompanying documentation are appropriate as to form and substance, OWNER shall, within thirty (30) days after receipt thereof, pay CONTRACTOR the amount approved by ENGINEER.

14.9.2 If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if ENGINEER so confirms, OWNER shall, upon receipt of the final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.1 the written consent of the Surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with CONTRACTOR's request for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

#### 14.10 CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute.

Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Substantial Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.9, nor any correction of defective Work by OWNER shall constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

#### 14.11 WAIVER OF CLAIMS

The making and acceptance of final payment shall constitute:

14.11.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.7 or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it shall not constitute a waiver by OWNER of any rights in respect of CONTRACTOR's continuing obligations under the Contract Documents; and

14.11.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

#### 14.12 ITEMS FOR PAYMENT

CONTRACTOR will be required to complete the Work specified herein and as shown on the drawings in accordance with the Contract and at the Contract Unit Price established for each of the payment items listed in the Bid Proposal of these Contract Documents. All work which is subsidiary and pertinent to a particular bid item and is not listed as a separate bid item shall be completed as a part of the bid item to which it applies. In case of dispute as to the bid item to which subsidiary or pertinent work applies, ENGINEER's decision shall govern.